



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~WICKLIFFSON~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Tom A. Craven
County Auditor
McLennan County
Waco, Texas

Dear Sir:

Opinion No. 0-4931

Re: Whether man living in one county
may claim his ranch in another
county as his homestead.

Your request for an opinion on the above question
reads as follows:

"A man is employed and maintains a residence in
'A' county. He owns no real estate in 'A' county.
He owns a ranch in 'B' county. Although he has never
maintained his principal residence on the ranch, he
and his wife, on various occasions have spent several
days and nights on the 'B' county property.

"I shall thank you to advise me whether or not,
in your opinion, this man is entitled to a homestead
exemption from State taxes on the 'B' county real
estate."

The situation presented in your letter is not such
that it may be said as a matter of law that the ranch either
is or is not this man's homestead. Whether or not certain
property constitutes the homestead of a family is largely de-
termined by the intention of the head of the family, together
with the particular circumstances which may tend to establish
or discredit such intention. For this reason we cannot give
a categorical answer to your question.

The essential elements of a homestead and the rules
applicable thereto are set out in our opinions Numbers 0-1638
and 0-4164, copies of which are attached hereto. By way of
supplementing these opinions we shall discuss a few additional
authorities which we believe to be peculiarly applicable to
your question.

In Taylor Feed Pen Company v. Taylor National Bank,
(Ct. of Civ. Appeals, 1915) 181 S.W. 534, (Judgment and modified
on other grounds by the Commission of Appeals, 215 S. W. 850)

the court announced the following rule at page 540:

"While actual residence is not necessary under all circumstances to fix the homestead character upon land, a mere intention to occupy land some time in the future as a homestead, unaccompanied by any act clearly evidencing such intention, is not sufficient to attach to such land the homestead character."
(Authorities cited)

In *Parker v. Cook*, (Court of Civil Appeals, 1909) 122 S.W. 419, the facts were quite similar to those presented in your question. Mr. Cook owned a 61 acre farm in Red River County, which was adequately equipped to serve as a home for himself and family, which he designated as his homestead. He and his family never actually occupied this property but instead he moved to Fort Worth, where he followed his trade as a carpenter. It appearing that Mr. Cook was unable to make a living at his trade of carpenter while living on the Red River County farm, the Court held that such farm could not constitute his homestead, being unfit as to him to meet the requirements of a home. Said the court:

". . . The tract of land was a farm; but Cook was a carpenter, not a farmer. He intended to occupy the farm whenever conditions changed so that he could go there and make a living for his family and money to pay his debts. Such a time might never come. There was no evidence to show that there was any good reason for expecting it in the near future. To sustain the homestead claim in this case would be carrying the effect of intention alone beyond the limits fixed by any adjudicated case we have examined. . ."

In *First Coleman National Bank of Coleman v. Childs*, (Eastland Court of Civil Appeals, 1938) 113 S. W. (2d) 602, (writ refused) the court declared:

"Under the circumstances of this case, the mortgagor, or Childs and his wife are estopped to assert the homestead claim to the 200 acres in question, regardless of the fact that the husband, after moving from the farm to the city property, made certain uses of the farm for raising stock and agricultural products, both of which were consumed in the maintenance of his family while residing in the city property. In other words, the use of rural land by a city or town resident does not in itself support homestead claims therein. *Alexander v. Wilson*, supra; *Roberts v. Cawthorn*, 26 Tex. Civ. App. 477, 63 S. W. 332."

In Nunn's textbook on "Texas Homestead" at page 98, the following prerequisites for the acquisition of a homestead are laid down:

"There is no constitutional or statutory provision directing the manner by which the homestead character is impressed upon lands other than the stipulation: 'provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of the family.' In the judicial interpretation and application of this provision it has become well settled that the homestead character is impressed upon property: (a) by the actual use and occupancy of the property as a homestead; (b) or by a present intent to so use and occupy the same, coupled with acts of preparation, demonstrating such intent.

"Intent, in itself, will not impress the homestead character upon property, but such intent must be accompanied with a preparation, demonstrating such intent; and the said acts of preparation must be prosecuted with reasonable diligence to the extent that, within a reasonable time, they will result in the actual use and occupancy, or else it will be deemed that the intent to so use and occupy has been abandoned. Ultimate, actual use and occupancy of the property as a homestead is contemplated in all cases. If the intent be abandoned before the occupancy begins, no homestead rights are acquired. . . ."

While the facts submitted in your letter are inadequate to permit us to answer your question as a matter of law, we believe the foregoing authorities support the following conclusions which may guide you in the determination of the question:

1. If the man has never actually maintained his principal residence at the ranch in "B" county so as to impress it with the character of a homestead, occasional visits of several days are ineffectual to accomplish such a purpose.

2. If the man has no immediate intention of terminating his employment in "A" county, and if the ranch in "B" county is not suitably located as a residence while engaged in such employment in "A" county, then the ranch cannot constitute his homestead.

Honorable Tom A. Craven, page 4

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Walter R. Koch
Walter R. Koch
Assistant

WRK:AMM:wc

ENCLOSURES

APPROVED NOV 13, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman